



DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 221102-0229]

RIN 0625-AB15

Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to its authority under title VII of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) proposes to modify its regulations governing procedures related to administrative protective orders (APO) and service of documents submitted in antidumping (AD) and countervailing duty (CVD) proceedings. Commerce proposes to make permanent certain changes to its service procedures that have been adopted on a temporary basis due to COVID-19. Commerce also proposes additional clarifications and corrections to other procedural aspects of its AD/CVD regulations, including updates to the scope, circumvention, and covered merchandise referral regulations. Lastly, Commerce proposes to delete from its regulations two provisions that have been invalidated by the United States Court of Appeals for the Federal Circuit (Federal Circuit).

DATES: To be assured of consideration, written comments must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit electronic comments only through the Federal eRulemaking Portal at <http://www.Regulations.gov>, Docket No. ITA-2022-0013. Comments may also be submitted by

mail or hand delivery/courier, addressed to Lisa W. Wang, Assistant Secretary for Enforcement and Compliance, Room 18022, Department of Commerce, 1401 Constitution Ave., NW, Washington, DC 20230. An appointment must be made in advance with the APO/Dockets Unit at (202) 482-4920 to submit comments in person by hand delivery or courier. All comments submitted during the comment period permitted by this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at <http://www.Regulations.gov>. Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance Communications office at (202) 482-0063 or ECCcommunications@trade.gov.

FOR FURTHER INFORMATION CONTACT: Nikki Kalbing at (202) 482-4343, Elio Gonzalez at (202) 482-3765, or Scott McBride at (202) 482-6292.

SUPPLEMENTARY INFORMATION:

General Background

Title VII of the Act vests Commerce with authority to administer the AD/CVD laws. In particular, section 731 of the Act directs Commerce to impose an AD order on merchandise entering the United States when it determines that a producer or exporter is selling a class or kind of foreign merchandise into the United States at less than fair value (*i.e.*, dumping), and material injury or threat of material injury to that industry in the United States is found by the International Trade Commission (ITC). Section 701 of the Act directs Commerce to impose a CVD order when it determines that a government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the

United States, and material injury or threat of material injury to that industry in the United States is found by the ITC.¹

In conducting its AD/CVD proceedings, the statute directs Commerce to make certain information generally available on a public record.² Because of the nature of Commerce's proceedings, which frequently require Commerce to rely on non-public information such as business proprietary information in issuing its determinations, the statute also provides a framework for Commerce to receive such information and maintain its proprietary nature by exempting it from disclosure on the public record. Specifically, pursuant to section 777(c)(1)(A) of the Act, Commerce must make available to interested parties, under an APO, business proprietary information submitted to it during the course of an AD/CVD proceeding. Additionally, section 777(d) of the Act requires that parties submitting to Commerce business proprietary information which is covered by an APO must serve such information on all interested parties who are parties to the proceeding that are subject to the protective order.³ Section 777(d) of the Act also requires that the submitter serve a nonconfidential summary of the business proprietary information to all interested parties who are parties to the proceeding. Further, section 777(d) of the Act states that Commerce shall not accept information which is not accompanied by a certificate of service or otherwise does not comply with the statutory requirements. Section 777(c)(1)(B) of the Act authorizes Commerce to issue regulations governing the APO process. Commerce's current regulations are codified at 19 CFR part 351.

Section 351.303 of Commerce's regulations provides procedural rules governing the filing of documents (including public documents containing only public information, business

¹ A countervailable subsidy is further defined under section 771(5)(B) of the Act as existing when: A government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred. To be countervailable, a subsidy must be specific within the meaning of section 771(5A) of the Act.

² See generally section 777(a) of the Act. See also 19 CFR 351.104 (describing the official record of AD/CVD proceedings).

³ "Interested party" is defined under section 771(9) of the Act and 19 CFR 351.102(b)(29); "party to the proceeding" is defined under 19 CFR 351.102(b)(36).

proprietary documents containing business proprietary information, and public versions of business proprietary documents),⁴ as well as service of documents. In particular, § 351.303(b) generally requires that all parties submitting documents to Commerce must file electronically through Commerce’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Additionally, § 351.303(f)(1)(i) generally requires that all documents filed with Commerce must be served simultaneously on all parties on the relevant public or APO service lists.⁵ Section 351.303 also contains special rules for specific types of documents. For example, § 351.303(c) allows for a one-day lag in the filing of the final version of business proprietary documents and public versions of proprietary documents (known as the “one-day lag rule”). Commerce has adopted a number of temporary changes to its service rules due to COVID-19.⁶ These changes are codified at § 351.303(f)(4).

The purpose of the regulatory changes proposed in this rulemaking is to assist in making the administration of Commerce’s AD/CVD proceedings more efficient by allowing parties to utilize available electronic or other efficient means of service. In addition, the proposed changes also update certain outdated cross-references and citations, remove two paragraphs (§§ 351.204(d)(3) and 351.408(c)(3)) invalidated by the Federal Circuit, and make other revisions intended to clarify certain regulatory provisions, including the scope, circumvention, and covered merchandise referral regulations.

Explanation of the Proposed Rule

⁴ See 19 CFR 351.105 (defining the various categories of information in AD/CVD proceedings).

⁵ See 19 CFR 351.103(d) (describing service lists in AD/CVD proceedings). Under Commerce’s regulations, only those parties that have filed their application for APO access and been approved in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.305 will be included on the APO service list. Additionally, those parties that have filed a letter of appearance in accordance with 19 CFR 351.103(d)(1) will be included on the public service list.

⁶ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*) (temporarily modifying certain requirements for serving documents containing business proprietary information in AD/CVD cases to facilitate the effectuation of service through electronic means for purposes of promoting public health and slowing the spread of COVID-19). The *Temporary Rule* was extended on May 18, 2020, and then again indefinitely on July 10, 2020. See *Extension of Effective Period*, 85 FR 29615 (May 18, 2020); *Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

1. Service of Documents via ACCESS – Section 351.303(f)

Current § 351.303(f)(1)(i) provides that service of documents filed with Commerce on the record of a segment of a proceeding⁷ must be done simultaneously *via* personal service or first-class mail on all parties on the relevant APO or public service lists, with certain exceptions.⁸ Of importance, § 351.303(f)(1)(ii) provides that service of public documents, public versions of business proprietary documents, or a business proprietary document containing only the server's own business proprietary information may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served. Additionally, § 351.303(f)(3)(i) provides special rules for expediting service of case and rebuttal briefs upon designated agents located within and outside the United States.

In a prior rulemaking in which Commerce first established its electronic filing procedures under ACCESS, Commerce also announced the future implementation of its now-existing procedures related to the electronic release of Commerce-generated documents using ACCESS.⁹ Pursuant to these procedures, Commerce currently releases both public and business proprietary documents (and public versions of business proprietary documents) which it has self-generated using ACCESS. Upon release, Commerce notifies the lead attorney for service and any other designated authorized individuals on the relevant APO and public service lists via email that a new document has been posted to a particular segment of a proceeding.¹⁰ The authorized user is then able to securely access the business proprietary document for 14 days from the date of filing,¹¹ before its access to the document expires (access to public documents and public version

⁷ See 19 CFR 351.102(b)(40) (defining AD/CVD proceeding) and 19 CFR 351.102(b)(47) (defining segment of a proceeding).

⁸ For instance, the filing of AD/CVD petitions under 19 CFR 351.202(c) is exempted from simultaneous service under 19 CFR 351.303(f)(1)(i). However, service of the business proprietary documents would be required after the establishment of an APO for parties who join the APO service list. See 19 CFR 351.305(a) and (b)(3) through (4). The filing of proposed suspension agreements under 19 CFR 351.208(f)(1) is exempted from service altogether, as 19 CFR 351.208(f)(2) requires Commerce to provide a copy of the proposed agreement to the petitioner.

⁹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263, 39273 (July 6, 2011) (2011 Final Rule).

¹⁰ See *ACCESS Handbook on Electronic Filing Procedures* at 19-21 available at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹¹ *Id.* at 20-21.

documents does not expire; these documents remain available on ACCESS). At the time Commerce announced these procedures, it received comments requesting that Commerce adopt similar procedures to effectuate service of documents filed by interested parties on one another.¹² Commerce considered these comments, but ultimately determined to focus its attention on establishing electronic filing procedures, rather than electronic service.¹³

In the years since the *2011 Final Rule*, the establishment of ACCESS, and the *Temporary Rule*, Commerce has gained significant experience with its electronic filing and service procedures and is now proposing new regulations to formally effectuate service *via* ACCESS. Since the *Temporary Rule* went into effect on March 24, 2020, Commerce received comments from the Committee to Support U.S. Trade Laws (CSUSTL)¹⁴ and the Customs and International Trade Bar Association (CITBA)¹⁵ expressing support for the *Temporary Rule* and requesting that Commerce promulgate regulations to make service of business proprietary documents *via* ACCESS permanent.

Under the *Temporary Rule*, § 351.303(f)(4) provides that, with limited exceptions, service of business proprietary documents are deemed to have been served on persons on the APO service list upon filing of the business proprietary document in ACCESS. Those APO-authorized persons receive an ACCESS email notification called a “BPI Release Digest” at approximately noon and 5:00 pm on business days, which notifies them of the availability of business proprietary documents for download. Those documents remain available for 14 days after filing. This method of service does not apply to requests for administrative review, new shipper review, changed circumstances review and expedited review. Because service lists for

¹² *2011 Final Rule*, 76 FR at 39270.

¹³ *Id.* (“The Department agrees that changes affecting service of business proprietary information should be introduced gradually and be subject to comment... {T}he Department has not changed any of the service requirements in the regulations... {because} {t}he Department has decided to focus on electronic filing, rather than electronic service, at this time.”).

¹⁴ Letter to the Hon. Wilbur L. Ross, Jr. from Mark B. Benedict and Timothy C. Brightbill on behalf of CSUSTL re Potential Responses to COVID-19/Workload Issues Affecting AD/CVD Cases (July 9, 2020) at 2 (“We believe the system has worked well, and Commerce should strongly consider making it permanent.”).

¹⁵ Letter to the Hon. Wilbur Ross from Deanna Tanner Okun and Elizabeth Drake, on behalf of CITBA re Petition for Rulemaking to Promulgate Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-10 as Final Rules.

these segments are not yet established in ACCESS at the time of filing the relevant request, parties must serve them by personal service or first-class mail.¹⁶ In addition, requests for a scope ruling or circumvention inquiry are served in accordance with §§ 351.225(n) and 351.226(n), respectively. The *Temporary Rule* also does not apply to the service of public documents and public versions of business proprietary documents. However, Commerce proposes effectuating service *via* ACCESS for public documents and public versions of business proprietary documents with revised § 351.303(f)(1), as discussed below.

Commerce proposes to continue requiring a person filing a document with Commerce to simultaneously serve a copy of the document on all other persons on the service list, with the exception of a petition and proposed suspension agreement (which are addressed under §§ 351.202(c) and 351.208(f)(1), respectively) and requests for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review (which have specific service requirements under current paragraph (f)(3) and revised paragraph (f)(2) of this section). Revised paragraph (f)(1)(i) addresses service of public documents and public versions of business proprietary documents. Revised paragraph (f)(1)(ii) addresses service of business proprietary documents, and revised paragraph (f)(1)(iii) provides acceptable alternative methods of service when ACCESS cannot effectuate service.

Under revised paragraph (f)(1)(i), service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case paragraph (f)(1)(iii) is applicable. This is an expansion of the *Temporary Rule*, which only applies to business proprietary documents. Commerce has determined that effectuating service *via* ACCESS will make the method of service consistent between business proprietary documents, public documents and public versions of business proprietary documents. It will also reduce the burden on the parties, while also reducing the risk of error associated with serving incorrect

¹⁶ See 19 CFR 351.303(f)(3)(ii).

documents or incorrect parties. Similar to what is done with business proprietary documents, ACCESS will email a “Public Release Digest” that notifies parties to the proceeding when a public document or public version of a business proprietary document submitted by parties to the proceeding is available for download. This digest will be emailed to individuals on Commerce’s public service lists at approximately noon and 5:00pm on business days.

Under new paragraph (f)(1)(ii)(A), service of a business proprietary document is effectuated on the persons on the APO service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case paragraph (f)(1)(iii) is applicable. In addition, new paragraph (f)(1)(ii)(A) provides that a business proprietary document submitted under the one-day lag rule that contains bracketing¹⁷ that is not final under paragraph (c)(2)(i) must be served using an acceptable alternative method under paragraph (f)(1)(iii), as discussed below. Because bracketing is not final until one business day after filing these documents, Commerce does not make them available in ACCESS. Therefore, they require an alternative method of service.

Under new paragraph (f)(1)(ii)(B), if a document contains business proprietary information of a person who is not included on the APO service list, then service of such document on that person cannot be effectuated on ACCESS. Instead, the submitter must serve that person its own business proprietary information using an acceptable alternative method under new paragraph (f)(1)(iii) and in accordance with § 351.306(c)(2) as applicable.

Under new paragraph (f)(1)(iii), Commerce will provide that if service of a public document, a public version of a business proprietary document, or a business proprietary document cannot be effectuated on ACCESS for any reason, an acceptable alternative method of service must be used, such as first class mail, hand delivery or electronic transmission.

With regard to service by electronic transmission, Commerce’s current regulations provide that service of a public document, a public version of a business proprietary document,

¹⁷ The term “bracketing” refers to the placement of square brackets (“[]”) around certain information to indicate that the submitter of the information requests business proprietary treatment for that item of information. *See* 19 CFR 351.304(b).

or a business proprietary document containing the submitter's own business proprietary information, may be made by facsimile or other electronic transmission process, with the consent of the person being served. This provision was first introduced in 1997 (including only service of a submitter's own business proprietary document and service of public versions),¹⁸ and later amended in 2011 to include service of public documents and make specific reference to APO and public service lists.¹⁹

Commerce has since received several informal suggestions and comments from *pro se* parties and non-APO-authorized representatives located outside the United States requesting that other parties be allowed to serve them their own business proprietary information by email or other electronic process. Commerce has generally discouraged the emailing of third-party business proprietary information, but recognized that allowing it with the consent of the recipient, when the business proprietary information belongs to the recipient, would result in efficiencies and allow those parties who could not be served through ACCESS (such as *pro se* parties and non-APO-authorized representatives) to receive service in a more expeditious manner than first class mail or other means specified in the regulations. As such, in the *Temporary Rule* at paragraph (f)(4)(iv), Commerce allowed an interested party to serve by electronic transmission a *pro se* party or a non-APO-authorized representative of a party, a document containing the business proprietary information of either the *pro se* party or the party represented by the non-APO-authorized representative.

In this proposed rule, Commerce has created a new paragraph (f)(1)(iii) that expands the scope of paragraph (f)(4)(iv) of the *Temporary Rule* to allow service by electronic transmission if the business proprietary document being served contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient. By referring to the submitter and recipient rather than *pro se* party and non-APO-authorized representative as in the

¹⁸ *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27337 (May 19, 1997) (*1997 Antidumping and Countervailing Duties Final Rule*).

¹⁹ *2011 Final Rule*, 76 FR at 39270.

Temporary Rule, Commerce is proposing to expand the eligible group to also include APO-authorized representatives, such that APO-authorized representatives will also be permitted to serve one another by electronic transmission, provided that the business proprietary information in the document belongs to the client of either the representative submitting the document or receiving service, and that the receiving representative gives its consent. Documents containing third-party business proprietary information belonging to a party other than the submitter or the recipient may not be served by electronic transmission under this paragraph.

Current paragraphs (f)(2) and (f)(3) involve certificates of service and service requirements for certain documents, respectively. Revised paragraphs (f)(2) and (f)(3) reverse the order in which each topic is addressed. Current paragraph (f)(3)(i) requires the person filing a case or rebuttal brief to simultaneously serve on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief by either personal service on the same day the brief is filed or by overnight mail or courier on the next day. Further, if the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail. This requirement has been negated by the *Temporary Rule*, which allows service of case and rebuttal briefs *via* ACCESS on the date they are filed.

In this proposed rule, Commerce will remove the special requirements for service of case and rebuttal briefs from paragraph (f)(3)(i). Instead, service of case and rebuttal briefs will occur under the general service provision in revised paragraph (f)(1). Current paragraph (f)(3)(ii), which requires a request for expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review to be served by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later, will then be renumbered as paragraph (f)(2)(i). Commerce will also revise the citation contained in revised paragraph (f)(2)(i), from paragraph (f)(2) to paragraph (f)(3), which is the renumbered paragraph involving certificate of service requirements.

Commerce proposes creating a new paragraph (f)(2)(ii) to require an interested party that files a scope ruling application or request for circumvention inquiry to serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively. Commerce added this paragraph to bring the service regulations in conformity with the September 20, 2021, final rule modifying various provisions of Commerce's AD and CVD regulations.²⁰

Revised paragraph (f)(3) will contain the same language that appears in current paragraph (f)(2), which requires that each document filed with Commerce include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. It continues to state that Commerce may refuse to accept any document that is not accompanied by a certificate of service. No changes are made to this paragraph besides the numbering. Commerce believes it is useful for a submitter to document the parties who it understands will be served at the time of filing the document. A certificate of service is also essential to determining the method of service when an acceptable alternative method of service (besides ACCESS) is used.

In light of the changes discussed in this proposed rule, Commerce finds that it is no longer necessary to continue the service rules set forth in the *Temporary Rule* and codified at § 351.303(f). Commerce therefore proposes to terminate and remove § 351.303(f)(4). If this proposal is adopted, § 351.303(f) will be terminated.

2. Service on Pro Se Parties and Non-APO-Authorized Representatives – Section 351.306(c)(2)

Section 351.306(c)(2) of Commerce's current regulations requires a party submitting a document containing the business proprietary information of a *pro se* party to serve that *pro se* party with a version of the document containing only the *pro se* party's business proprietary information. The current regulations do not contain any similar requirement that a party

²⁰ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*2021 Final Rule*).

submitting a document containing the business proprietary information of a party with a non-APO-authorized representative must also serve that non-APO-authorized representative with a version of the document containing only the business proprietary information of the party with the non-APO-authorized representative. However, the *Temporary Rule* at § 351.303(f)(4)(iv) contained such a provision. Commerce thus proposes making it permanent by adding to § 351.306(c)(2) the requirement that the submitting party must also serve a party's non-APO-authorized representative with a version of the document that contains only that non-APO-represented party's business proprietary information.

3. Service Requirement for Earlier-Filed Business Proprietary Submissions Upon New Authorized Applicants – Section 351.305

Commerce's current regulations at § 351.303(f) require a submitter to serve a document on all persons on the APO and public service lists simultaneously at the time of filing. Because the service lists are updated on an ongoing basis, Commerce requires submitters to serve earlier-filed business proprietary documents upon representatives who are added to the APO service lists after a document has been filed. Specifically, § 351.305(b)(3) and (4) require service of such documents already on the record upon a representative within two business days after they are added to the APO service list for a submission filed before the first questionnaire response is filed, and within five business days for submissions filed after the first questionnaire response is filed.²¹ Parties or their representatives are currently responsible for monitoring who is added to the APO service list and serving those parties as the segment of the proceeding progresses. There is no service requirement for parties added to the public service list after a document is filed, because these documents can be retrieved on ACCESS.

In this proposed rule, Commerce is requiring those representatives who are granted APO access after a business proprietary document has already been filed, but is no longer available in

²¹ See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures: Final Rule*, 73 FR 3634, 3637 (January 22, 2008). In 2008, Commerce re-established the requirement to serve a new authorized applicant within two business days of the approval of the APO application for submissions filed before the first questionnaire response is submitted. Commerce noted that this requirement was previously in place before the 1998 *Final Rule* but it was inadvertently deleted from it. *Id.*

ACCESS, to contact the party that filed the business proprietary document to request service of that document by any acceptable means agreed upon by the parties (*i.e.*, electronic service or otherwise). Commerce proposes to remove the requirement of service of earlier-filed business proprietary documents to new authorized applicants from current paragraphs (b)(3) and (4) and address it in a new paragraph (c)(2). Current paragraph (b)(3) is removed and current paragraph (b)(4) is renumbered (b)(3). The proposed regulation removes the responsibility of the submitter to monitor the newly added authorized applicants to identify who needs to be served, and places the responsibility on the authorized applicant to request service. This requirement is addressed in new paragraph (c)(2).

In addition, revised paragraph (b)(3) and new paragraphs (c)(2)(i) and (ii) specify the timeframe in which service must be made, by considering whether the authorized applicant's APO application was approved before or after the first questionnaire response is submitted. Commerce proposes replacing "first questionnaire response" with "first response to the initial questionnaire" so it is not mistaken with other questionnaire responses such as Quantity and Value questionnaire responses. Commerce proposes specifying that the submitting party must serve the authorized applicant within two business days of the request if the APO application is approved before the first response to the initial questionnaire was submitted under paragraph new (c)(2)(i). If the APO application was approved after the first response to the initial questionnaire was submitted, revised paragraph (c)(2)(ii) requires the submitting party to serve the authorized applicant within five business days of the request.

4. One-Day Lag Rule – Section 351.303

In 1997, Commerce codified its practice of allowing a party to file only one copy of a business proprietary document on the deadline, and then take additional time to review the bracketing of business proprietary information, and make the necessary changes to the bracketing before filing the required number of copies of the final business proprietary document

and the public version on the next business day.²² The one-day lag rule was intended to provide an additional safeguard by giving more time to interested parties to ensure that both their own business proprietary information as well as APO-protected information of third parties is not inadvertently disclosed. In 2011, with the introduction of electronic filing via ACCESS, Commerce continued to allow filing under the one-day lag rule under § 351.303(c)(2)(i), which requires a person to file a business proprietary document within the applicable deadline.²³ Notably, petitions, supplements to a petition, or any other document filed prior to the initiation of an investigation are excluded from the one-day lag rule.²⁴

Normally, the business proprietary document filed on the due date must be served in accordance with current § 351.303(f)(i), but under the *Temporary Rule*, Commerce waived this service requirement.²⁵ A business proprietary document filed under the one-day lag rule contains non-final bracketing and is therefore not treated as an official record document in ACCESS. As such, business proprietary documents filed under the one-day lag rule and containing non-final bracketing cannot be served via ACCESS using the same technology used for serving official record documents. During Commerce's temporary waiver of this service requirement during the past two years, Commerce became aware of uncertainties that resulted from waiving service. For example, both Commerce staff and parties to the proceeding were sometimes unaware that other interested parties were filing their submissions under the one-day lag rule. At times, it was not clear whether an interested party had missed the filing deadline or had opted to use the one-day lag rule.

In this proposed rule, Commerce proposes reinstating the requirement that a business proprietary document filed on the due date under the one-day lag rule must also be served on the

²² See *1997 Antidumping and Countervailing Duties Final Rule*, 62 FR 27337; see also *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391, 24393 (May 4, 1998) (*1998 Final Rule*) (stating that 1997 *Antidumping and Countervailing Duties Final Rule*'s procedural regulations codified Commerce practice of one-day lag rule).

²³ *2011 Final Rule*, 76 FR 39268.

²⁴ *Id.*; see also 19 CFR 351.303(c)(2)(i).

²⁵ *Temporary Rule*, 85 FR 17006.

persons on the APO service list and those non-APO authorized parties whose business proprietary information is contained in the document using one of the acceptable alternative methods of service under new § 351.303(f)(1)(iii). This way, APO-authorized counsel and non-APO-authorized parties whose business proprietary information is in the document will receive service of the business proprietary document. In addition, Commerce proposes requiring the submitter to also file the certificate of service that would be included in the submission (pursuant to § 351.303(f)(3)), as a standalone public document in ACCESS under revised § 351.303(c)(2)(i). Filing the certificate of service separately will document for the record the date and alternative method of service used by the submitter when it filed the business proprietary document under the one-day lag rule. This would provide an ACCESS notification to Commerce staff and the parties to the proceeding that the document was filed under the one-day lag rule.

Under current § 351.303(c)(2)(ii), a submitter who used the one-day lag rule must then file the complete final business proprietary document by the close of business one business day after the applicable deadline. The final business proprietary document must be identical, in all respects, to the business proprietary document filed on the previous day, except for any bracketing corrections. In addition, the submitter must file the public version at the same time.²⁶

Under Commerce's current service regulations, a submitter must serve on persons on the APO service list the complete final business proprietary document, if there are bracketing corrections. If there are no bracketing corrections, a person need not serve a copy of the final business proprietary document.²⁷ A submitter must also serve the public version on persons on the public service list.²⁸ Because ACCESS will generally effectuate service under the proposed amendments to the regulations, it is no longer necessary for § 351.303(c)(2)(ii) to state that service of the final business proprietary document with bracketing corrections is required in all

²⁶ See 19 CFR 351.303(c)(2)(iii).

²⁷ See 19 CFR 351.303(c)(2)(ii).

²⁸ See 19 CFR 351.303(c)(2)(iii).

circumstances. The service rules for the final business proprietary document and the public version will default to the proposed general rules regarding service outlined elsewhere in the proposed rule. To the extent the final business proprietary document contains business proprietary information of a party not on the APO service list, service of the final business proprietary document must be made using an acceptable alternative means of service, with that party's consent.

5. Filing of Public Versions of Business Proprietary Documents – Section 351.304

Current § 351.304(c)(1) provides that parties filing documents containing business proprietary information must file a public version of the document on the first business day after the filing deadline for the business proprietary version. In some instances, parties have interpreted § 351.304(c)(1) to mean that the deadline for the public version of a business proprietary document *not* filed under the one-day lag rule is the first business day after the filing deadline for the business proprietary document. Commerce proposes to revise § 351.304(c)(1) to clarify that the public version of a business proprietary document is due on the filing deadline of the business proprietary document. Thus, the public version of a business proprietary document *not* filed under the one-day lag rule is due the same day as the business proprietary document is filed. However, if the business proprietary document is filed under the one-day lag rule, the deadline for the public version of the business proprietary document is the first business day after the filing deadline for the business proprietary document (the same deadline as the final business proprietary document filed under the one-day lag rule). Finally, current § 351.304(c)(1) incorrectly references § 351.303(b), which sets forth general filing requirements. The correct citation is to § 351.303(c)(2), which details filing requirements under the one-day lag rule. Commerce proposes to correct this citation.

Current § 351.304(c)(2) provides that under the one-day lag rule, a submitter may make corrections to the bracketing of a business proprietary document, and file a corrected final business proprietary document and public version on the next business day. However, §

351.304(c)(2) incorrectly references § 351.303(b), which sets forth general filing requirements. The correct citation is to § 351.303(c)(2)(ii) and (iii), which detail filing requirements under the one-day lag rule for the final business proprietary document and public version. In addition, § 351.304(c)(2) incorrectly references “paragraph (c)(2)” (*i.e.*, § 351.304(c)(2)) which is the very same paragraph). The correct citation is to the preceding paragraph, § 351.304(c)(1), which sets forth the date in which the public version should be filed under the one-day lag rule. Commerce proposes corrections to these citations.

6. APO Applications – Section 351.305(b)(2)

Section 351.305(b)(2) describes the process in which a representative of a party to the proceeding may obtain access to proprietary information under an APO by submitting Form ITA-367 to the Secretary, allowing for the use of an applicant’s own word processing equipment to create the application, and requiring it to be served using the most expeditious means possible. Commerce proposes to revise this provision to require an applicant to use electronic Form ITA-367, which is available in ACCESS at <https://access.trade.gov>. The electronic application will then be filed and served in ACCESS upon submission. As such, Commerce also proposes revising this provision to remove the separate requirement that the application be served using the most expeditious means possible because service will be effectuated via ACCESS.

7. Central Records Unit and Administrative Protective Order and Dockets Unit – Section 351.103

Commerce proposes updating certain information pertaining to the Central Records Unit (CRU) and Administrative Protective Order and Dockets (APO/Dockets) Unit in § 351.103(a) and (b), including an update of the CRU’s room number in paragraph (a) and the deletion of an extraneous period in Commerce’s street address in paragraphs (a) and (b). In addition, Commerce proposes adding a statement that visitors to the CRU and the APO/Dockets Unit should consult the ACCESS website for information regarding in-person visits and in-person manual filings, respectively. By posting such information on the ACCESS website, Commerce

can provide updates to the public as to the operating status of the CRU and the APO/Dockets Unit. This will be helpful in light of limited operations or restrictions on visitor access to the Commerce building, such as those related to COVID-19.

8. Other Corrections and Updates

Commerce proposes to make certain additional revisions to the regulations, as described below.

A. Sections 351.404(d) and 351.104(a)(2)(ii)(A)

Commerce's current regulations contain certain outdated cross-references to other regulatory provisions. Commerce proposes to correct the following cross-references.

First, § 351.404(d) states that allegations concerning market viability or exceptions to calculating price-based normal value in viable markets must be filed within the time limits set forth under § 351.301(d)(1). However, based on the 2013 amendments to the regulations, the current regulations do not contain a § 351.301(d), and the correct cross-reference is § 351.301(c)(2)(i).²⁹

Second, § 351.104(a)(2)(ii)(A), regarding the rejection of material from the record of a proceeding, currently refers to § 351.301(b) for the definition of untimely filed new factual information. However, based on the 2013 amendments to the regulations, the correct cross-reference for time limits for submitting new factual information is § 351.301(c).³⁰

B. Sections 351.301(c)(2)(vi) and (3)(iv)

Commerce also proposes to revise certain provisions in § 351.301. Commerce's regulations at § 351.301 set forth the time limits for submitting factual information during the course of AD and CVD proceedings. Many of the time limits specified in § 351.301(c) are based

²⁹ The 2013 amendments to the regulations amended § 351.301 to only include subsections (a)-(c). Under those amendments, § 351.301(c)(2)(i) became the new provision setting forth the time limits for allegations concerning market viability or exceptions to calculating price-based normal value in viable markets. *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21255 (April 10, 2013) (*2013 Final Rule*). However, the amendments did not also update § 351.404(d) to cross-reference § 351.301(c)(2)(i). *Id.*

³⁰ Under the 2013 amendments to the regulations, the provision on time limits for the submission of new factual information was moved to § 351.301(c). *2013 Final Rule*, 78 FR 21255. However, the amendments did not also update § 351.104(a)(2)(ii)(A) to cross-reference § 351.301(c). *Id.*

off the date a submission is filed with Commerce. However, the time limits specified in § 351.301(c)(2)(vi) and (c)(3)(iv) are based off the date the submission of factual information is served on interested parties. For clarity and to provide consistency in the time limits that apply to the submission of factual information, Commerce proposes to revise § 351.301(c)(2)(vi) and (c)(3)(iv) so that the time limits for submitting factual information under these provisions are based off the date a submission is filed with Commerce.

C. Sections 351.225(f)(1), 351.225(f)(2), 351.226(f)(1), 351.226(f)(2) and 351.227(d)

In the *2021 Final Rule*, Commerce revised § 351.225, which describes the applicable procedures and standards concerning scope inquiries, created § 351.226, which describes the applicable procedures and standards concerning circumvention inquiries, and created § 351.227, which applies to covered merchandise inquiries. Current § 351.225(f)(2) states that within 30 days of the initiation of a scope inquiry under § 351.225(d)(2), an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. However, the cross-reference to § 351.225(d)(2) is incorrect and the correct reference is § 351.225(d)(1), which governs the initiation of scope inquiries. Therefore, Commerce proposes to correct this cross-reference.

In addition, §§ 351.225(f)(1) and (2), 351.226(f)(1) and (2), and 351.227(d)(1) all use the terminology “within 30 days of” and “within 14 days of,” which has led to some unnecessary confusion if that phrase refers to time period before and after 30 and 14 days, or only after 30 and 14 days. The intention of those regulatory provisions was always just to pertain to periods “after” the triggering event, so Commerce proposes in each incidence to replace the word “of” in those provisions with “after.” Thus, each phrase would now say “within 30 days after” and “within 14 days after” to make the deadlines for filing submissions clearer.

D. Sections 351.225(b), 351.226(b), 351.225(d) and 351.226(d)(1)

As we have explained, in the *2021 Final Rule* Commerce revised its scope inquiry regulations and created new regulations to address circumvention inquiries. One of those changes was to require that if Commerce self-initiates a scope inquiry or circumvention inquiry, it will publish a notice in the *Federal Register* initiating that inquiry. The language currently in §§ 351.225(b) and 351.226(b) says that Commerce will “initiate” “and publish a notice,” but in fact, Commerce intended for the initiation to be effective in both cases upon the date of publication of those notice in the *Federal Register*. Accordingly, for clarification, we are proposing modifying the language to say that self-initiation of both inquiries will be “by publishing a notice of initiation in the *Federal Register*.”

As part of the new procedures set forth in both sets of regulations, Commerce explained that it must make determinations to accept or reject a scope application or circumvention inquiry request within 30 days. Commerce also explained that if it does accept the scope application or circumvention inquiry request, it must also decide within that period of time to initiate or not initiate an inquiry. For scope inquiries, if Commerce makes no determination in 30 days, then the regulations under § 351.225(d)(1)(ii) provides that the scope ruling application will be deemed accepted and the scope inquiry will be deemed initiated. We believe that the language in §§ 351.225(d) and 351.226(d)(1) could be clarified with respect to both the acceptance/rejection and initiation/no-initiation status in those provisions, including a reference to the deemed initiation alternative in § 351.225(d)(1)(ii), so we have proposed the addition of language in both provisions to avoid future misunderstandings.

E. Section 351.225(e)(2)

Section 225(e)(2) allows Commerce to extend a scope ruling for good cause from its initial 120 days by no more than another 180 days. The intention of the 180 day extension was to allow for a total of no more than 300 days from initiation of the scope inquiry in which to issue a scope ruling if the case were fully extended. However, some individuals, both within

Commerce and outside of Commerce, have asked if the text in the regulation was intended to only allow extension of the scope ruling up to 180 days following initiation. Accordingly, we believe that § 225(e)(2) should be clarified to add language following the 180 day language to read as follows: “by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension.”

F. Section 351.226(l)(2)(ii)

Commerce proposes to add the word “circumvention” before the word “inquiry” in the phrase “after the date of the publication of the notice of initiation of the inquiry” in § 351.226(l)(2)(ii). This is to provide clarification that this provision applies to the initiation of a circumvention inquiry, and not another inquiry. Similar language is found in the parallel provisions applicable to §§ 351.225(l) (scope) and 351.227(l) (covered merchandise) inquiries, so providing this clarifying word would assist in providing consistency among these different inquiry regulations.

G. Section 351.227(b)

As we have explained, in the *2021 Final Rule*, Commerce also created new § 351.227, which addresses procedures and standards specific to Commerce’s consideration of covered merchandise referrals from U.S. Customs and Border Protection (CBP) under section 517(b)(4)(A) of the Act. This regulation governs Commerce’s receipt of a covered merchandise referral from CBP, Commerce’s initiation and conduct of a covered merchandise inquiry, and Commerce’s covered merchandise determination. Commerce has identified certain aspects of § 351.227(b) that need to be clarified and revised. Under current § 351.227(b), within 20 days after receiving a covered merchandise referral from CBP that Commerce determines to be sufficient, Commerce will take one of two actions. Commerce will either initiate a covered merchandise inquiry and publish a notice of initiation in the *Federal Register*, or, if Commerce determines upon review of the covered merchandise referral that the issue can be addressed in an

ongoing segment of the proceeding, such as a scope or circumvention inquiry, Commerce will publish in the *Federal Register* a notice of its intent to address the covered merchandise referral in such other segment.

Commerce intends to revise § 351.227(b) in two ways. First, Commerce clarifies that, within 20 days of receiving a covered merchandise referral from CBP that Commerce determines to be sufficient, Commerce will issue its decision whether to initiate a covered merchandise inquiry or to address the covered merchandise referral in an ongoing segment of the proceeding. It was not Commerce's intent in drafting this regulation, and Commerce does not interpret this regulation, to mean that Commerce will publish notice of its decision in the *Federal Register* within 20 days of receipt its decision to initiate a covered merchandise inquiry or to address a covered merchandise referral in an ongoing segment of the proceeding. Thus, Commerce intends to revise § 351.227(b) to clarify this issue. Second, Commerce intends to revise § 351.227(b) to clarify that Commerce will take one of the two actions described above within 20 days of acknowledging receipt of a sufficient covered merchandise referral from CBP. This revision is necessary to preserve flexibility and to allow Commerce the full 20 days provided in the regulation to take one of the two actions described above after making a determination that the covered merchandise referral is sufficient.³¹

H. Section 351.305(a)

Commerce proposes to revise § 351.305(a) to add a reference to requests for a circumvention inquiry filed under § 351.226. In the *2021 Final Rule*, Commerce created new § 351.226, which covers the procedures for Commerce to address potential circumvention of

³¹ Commerce has described that in determining whether a covered merchandise referral is sufficient, Commerce may consider, among other things, whether the referral has provided the name and contact information of the parties to CBP's investigation, including the name and contact information of any known representative acting on behalf of such parties; an adequate description of the alleged covered merchandise; identification of the applicable AD or CVD orders; and any necessary information reasonably available to CBP regarding whether the merchandise at issue is covered merchandise. *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws, Proposed Rule*, 85 FR 49472, 49490 (August 13, 2020). Additionally, Commerce reviews the covered merchandise referral and any accompanying documentation to ensure any business proprietary information is properly redacted in accordance with Commerce's statutory and regulatory requirements. *Id.*

AD/CVD orders. Prior to the *2021 Final Rule*, circumvention inquiries were governed under Commerce's scope inquiries regulation at § 351.225. Section 351.305(a) of Commerce's current regulations discusses the timing of when Commerce places an administrative protective order on the record of its proceedings. This paragraph indicates that within five business days after the day on which an application for a scope ruling is properly filed under § 351.225, Commerce will place an administrative protective order on the record of the segment of the proceeding. Thus, Commerce proposes to revise § 351.305(a) to add a reference to requests for a circumvention inquiry filed under § 351.226.

I. Sections 351.204(d)(3) and 351.408(c)(3)

Two of Commerce's regulations have been invalidated by the Federal Circuit, and Commerce proposes to remove the invalidated paragraphs from the CFR.

On June 3, 2014, the Federal Circuit invalidated § 351.204(d)(3) of Commerce's regulations in *MacLean-Fogg Co. v. United States*, 753 F. 3d 1237 (Fed. Cir. 2014) (*MacLean-Fogg*). The regulatory language at issue is as follows: "*Exclusion of voluntary respondents' rates from all-others rate*. In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents." Section 705(c)(5)(A) of the Act states that the "all-others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated." The Federal Circuit held that there is no ambiguity in the statutory words "individually" and "investigated," and that a voluntary respondent who receives an individual rate has undergone "individual investigation." The Federal Circuit therefore concluded that § 351.204(d)(3) was invalid, and Commerce is proposing removing that paragraph and replacing it with the language found in current § 351.204(d)(4).

Furthermore, on May 14, 2010, the Federal Circuit in *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010) (*Dorbest*), invalidated § 351.408(c)(3) of Commerce's

regulations. Section 733(c) of the Act provides that Commerce will value the factors of production (FOPs) in non-market economy cases using the best available information regarding the value of such factors in a market economy country or countries considered to be appropriate by the administering authority. The Act requires that when valuing the FOPs, Commerce utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of comparable economic development and significant producers of comparable merchandise.³²

However, it was Commerce's practice to calculate wages using a regression analysis that captured the worldwide relationship between *per capita* Gross National Income and hourly wage rates in manufacturing.³³ The language of § 351.408(c)(3) reflected this use of a regression analysis: "*Labor*. For Labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data and will be made available to the public." The Federal Circuit in *Dorbest* held that because the regulation required Commerce to use wage data in a regression analysis from countries that did not meet the statutory criteria, the regulation was invalid. Thus, Commerce is proposing removing § 351.408(c)(3) and replacing it with the language found in current § 351.408(c)(4).

Classification

Executive Order 12866

OMB has determined that this proposed rule is not significant for purposes of Executive Order 12866.

³² See section 733(c)(4) of the Act.

³³ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments* ("Antidumping Methodologies Notice"), 71 FR 61716 (October 19, 2006).

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This proposed rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this proposed rule is provided in the preamble, and is not repeated here.

The entities upon which this rulemaking could have an impact include foreign governments, foreign exporters and producers, some of whom are affiliated with U.S. companies, U.S. importers, and domestic producers of the domestic like product. However, the proposed modifications will not have a significant economic impact on these entities. Rather, they would make the administration of Commerce's AD/CVD proceedings more efficient by allowing parties to utilize available electronic or other expedient means of service, and by clarifying and updating certain regulatory provisions.

Enforcement & Compliance currently does not have information on the number of entities that would be considered small under the Small Business Administration's size standards for small businesses in the relevant industries. However, some of these entities may be considered small entities under the appropriate industry size standards. Although this proposed rule may indirectly impact small entities that are parties to individual AD and CVD proceedings, it will not have a significant economic impact on any such entities because the proposed rule

applies to administrative enforcement actions, only clarifying and establishing streamlined procedures; it does not impose any significant costs on regulated entities. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: November 18, 2022.

Lisa W. Wang,

Assistant Secretary

for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce is proposing to amend 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In § 351.103, revise paragraphs (a) and (b) to read as follows:

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

(a) Enforcement and Compliance's Central Records Unit maintains a Public File Room in Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the Public File Room should consult the ACCESS website at <https://access.trade.gov> for information regarding in-person visits. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (*see* § 351.104).

(b) Enforcement and Compliance's Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Visitors to the APO/Dockets Unit should consult the ACCESS website at <https://access.trade.gov> for information regarding in-person manual filings. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary information under APO, and conducting APO violation investigations. The APO/Dockets Unit also is the contact point for questions and

concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under §§ 351.105 and 351.304.

* * * * *

3. In § 351.104, revise paragraph (a)(2)(ii)(A) to read as follows:

§ 351.104 Record of proceedings.

(a) * * *

(2) * * *

(ii) * * *

(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(c));

* * * * *

§ 351.204 [Amended]

4. In § 351.204, remove paragraph (d)(3) and redesignate paragraph (d)(4) as paragraph (d)(3).

5. In § 351.225, revise paragraphs (b), (d)(1), (e)(2), and (f)(1) and (2) to read as follows:

§ 351.225 Scope rulings.

* * * * *

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry by publishing a notice of initiation in the *Federal Register*.

* * * * *

(d) *Initiation of a scope inquiry and other actions based on a scope application—(1) Acceptance and Initiation of a scope inquiry ruling application.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a scope application, the

Secretary will determine whether to accept or reject the scope ruling application and to initiate or not initiate a scope inquiry, or, in the alternative, paragraph (d)(1)(ii) will apply.

* * * * *

(e) * * *

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a scope inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

* * * * *

6. In § 351.226, revise paragraphs (b), (d)(1), (f)(1) and (2), and (l)(2)(ii) to read as follows:

§ 351.226 Circumvention Inquiries

* * * * *

(b) *Self-initiation of a circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, the Secretary may initiate a circumvention inquiry by publishing a notice of initiation in the *Federal Register*.

* * * * *

(d) * * * *

(1) *Initiation of circumvention inquiry.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request and whether to initiate or not initiate a circumvention inquiry. If it is not practicable to determine whether to accept or reject a request or initiate or not initiate within 30 days, the Secretary may extend that deadline by an additional 15 days.

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a circumvention inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual

information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

* * * * *

(1) * * *

(2) * * *

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the notice of initiation of the circumvention inquiry; and

* * * * *

7. In § 351.227, revise paragraphs (b) and (d)(1) to read as follows:

§ 351.227 Covered merchandise referrals.

* * * * *

(b) *Actions with respect to covered merchandise referral.* (1) Within 20 days after acknowledging receipt of a covered merchandise referral from the Customs Service pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take one of the following actions.

(i) Initiate a covered merchandise inquiry; or

(ii) If the Secretary determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, rather than initiating the covered merchandise inquiry, the Secretary will address the covered merchandise referral in such other segment.

(2) The Secretary will publish a notice of its action taken with respect to a covered merchandise referral under paragraph (b)(1) of this section in the *Federal Register*.

* * * * *

(d) * * *

(1) Within 30 days after the date of publication of the notice of an initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

* * * * *

8. In § 351.301, revise paragraphs (c)(2)(vi) and (c)(3)(iv) to read as follows:

§ 351.301 Time limits for submission of factual information.

* * * * *

(c) * * *

(2) * * *

(vi) *Rebuttal, clarification or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is filed with the Department.

(3) * * *

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is filed with the Department. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this paragraph (c)(3)(iv). Additionally, all factual information submitted under this paragraph (c)(3)(iv) must be accompanied by a written explanation identifying what

information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

* * * * *

9. In § 351.303, revise paragraphs (c)(2)(i) and (ii), and (f)(1) through (3) to read as follows:

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

* * * * *

(c) * * *

(2) * * *

(i) *Filing the business proprietary document.* A person must file a business proprietary document with the Department within the applicable time limit. The submitter must also file the certificate of service (a public document) included with its submission under this section as a separate, stand-alone submission on ACCESS.

(ii) *Filing of final business proprietary document; bracketing corrections.* By the close of business one business day after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” in accordance with paragraph (d)(2)(v) of this section.

* * * * *

(f) *Service of copies on other persons—(1) In general.* Generally, a person filing a document with the Department simultaneously must serve a copy of the document on all other

persons on the service list. Except as provided in § 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement), and paragraph (f)(2) of this section:

(i) Service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon filing of the submission in ACCESS, unless ACCESS is unavailable, in which case, paragraph (f)(1)(iii) of this section is applicable.

(ii)(A) Service of a business proprietary document is effectuated on the persons on the APO service list upon filing of the submission in ACCESS unless ACCESS is unavailable, in which case, paragraph (f)(1)(iii) of this section is applicable. In addition, a business proprietary document submitted under the one-day lag rule under paragraph (c)(2)(i) of this section must be served using an acceptable alternative method under paragraph (f)(1)(iii) of this section.

(B) If the document contains the business proprietary information of a person who is not included on the APO service list, then service of such documents on that person cannot be effectuated on ACCESS and the submitter must serve that person its own business proprietary information using an acceptable alternative method under paragraph (f)(1)(iii) of this section. In addition, specific service requirements under § 351.306(c)(2) are applicable.

(iii) If service of a public document, public version of a business proprietary document, or a business proprietary document cannot be effectuated on ACCESS (for any reason), an alternative method of service must be used. Acceptable alternative methods may include: first class mail, hand delivery, or electronic transmission. Electronic transmission may only be used as an acceptable alternative method of service for business proprietary documents under paragraph (f)(1)(ii) of this section if the business proprietary document contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient.

(2) *Service requirements for certain documents—(i) Request for review.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative

review, a new shipper review, or a changed circumstances review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(ii) *Scope and circumvention.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a scope ruling application or a request for a circumvention inquiry must serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively.

(3) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

* * * * *

10. In § 351.304, revise paragraphs (c)(1) and (2) to read as follows:

§ 351.304 Establishing business proprietary treatment of information.

* * * * *

(c) * * *

(1) A person filing a submission that contains information for which business proprietary treatment is claimed must also file a public version of the submission. The public version must be filed on the filing deadline for the business proprietary document. If the business proprietary document was filed under the one-day lag rule (*see* § 351.303(c)(2)), the public version and the final business proprietary document must be filed on the first business day after the filing

deadline. The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary document along with the public version (*see* § 351.303(c)(2)(ii) through (iii)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(1) of this section, however, the bracketing of business proprietary information in the original business proprietary document or, if a corrected version is timely filed, the corrected business proprietary document will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

* * * * *

11. In § 351.305:

- a. Revise the introductory text of paragraph (a);
- b. Revise paragraph (b)(2) and (3), and remove paragraph (b)(4); and
- c. Revise paragraph (c).

The revisions read as follows:

§ 351.305 Access to business proprietary information.

* * * * *

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record as follows: within two business days after the day on which a petition is filed or an investigation is self-initiated; within five business days after the day on which a request for a new shipper review is properly filed in accordance with §§ 351.214 and 351.303, an application for a scope ruling is properly filed in accordance with §§ 351.225 and 351.303, or a request for a circumvention inquiry is properly filed in accordance with §§ 351.226 and 351.303; within five business days after the day on which a request for a changed circumstances review is properly filed in accordance with §§ 351.216 and 351.303 or a changed circumstances review is self-initiated; or within five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

* * * * *

(b) * * *

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting an electronic application available in ACCESS at <https://access.trade.gov> (Form ITA-367) to the Secretary. The electronic application will be filed and served in ACCESS upon submission. Form ITA-367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA-367 must be accompanied by a certification that the application is consistent with Form ITA-367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA-367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding.

(3) To minimize the disruption caused by late applications, an application should be filed before the first response to the initial questionnaire has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due.

* * * * *

(c) *Approval of access under administrative protective order; administrative protective order service list; service of earlier-filed business proprietary submissions.* (1) The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

(2) After the Secretary approves an application, the authorized applicant may request service of earlier-filed business proprietary submissions of the other parties that are no longer available in ACCESS.

(i) For an application that is approved before the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within two business days of the request.

(ii) For an application that is approved after the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within five business days of the request. Any authorized applicant who filed the application after the first response to the initial questionnaire is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record.

* * * * *

12. In § 351.306, revise paragraph (c)(2) to read as follows:

§ 351.306 Use of business proprietary information.

* * * * *

(c) * * *

(2) If a party to a proceeding is not represented, or its representative is not an authorized applicant, the submitter of a document containing that party's business proprietary information must serve that party or its representative, if applicable, with a version of the document that contains only that party's business proprietary information consistent with § 351.303(f)(1)(iii). The document must not contain the business proprietary information of other parties.

* * * * *

13. In § 351.404, revise paragraph (d) to read as follows:

§ 351.404 Selection of the market to be used as the basis for normal value.

* * * * *

(d) Allegations concerning market viability and the basis for determining a price-based normal value. In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(c)(2)(i).

§ 351.408 [Amended]

14. In § 351.408, remove paragraph (c)(3) and redesignate paragraph (c)(4) as paragraph (c)(3).